

Application Number 10/693,011  
Response to Office Action mailed June 2, 2009

### **REMARKS**

The following remarks are responsive to the final Office Action dated June 2, 2009. Claims 1-10, 21, and 23-39 are pending.

### **Interview Summary**

In a telephonic interview initiated by Applicant on July 23, 2009, Examiners Rex R. Holmes and George R. Evanisko and Applicant's representatives, Jessica H. Kwak and Timothy A. Grathwol, discussed the above-referenced application. In particular, the parties discussed the final Office Action mailed on June 2, 2009. The parties discussed the new matter objections presented in the Office Action, as well as the rejections under 35 U.S.C. § 103(a) of independent claims 1 and 23, and dependent claims 5-8. Applicant's representatives generally discussed how modification of Pesola in view of Maoz would undermine the fundamental principle of operation of Pesola, and, therefore, is insufficient to render Applicant's claims obvious. In addition, Applicant's representatives noted that Persson does not disclose or suggest an electrostatic discharge layer that defines an aperture, as required by claims 5 and 23.

No agreement regarding the claims was reached and no exhibits were introduced during the interview. Applicant thanks the Examiners for taking time to discuss the application.

### **New Matter Objections Under 35 U.S.C. § 132(a)**

The Office Action objected to the amendment to paragraph [0141] of Applicant's disclosure submitted in the Amendment filed on February 17, 2009.<sup>1</sup> In particular, the Office Action objected to the language specifying that the gaps depicted in FIG. 24 may extend outward to more than two different edges of the ground plane, as well as the language specifying that the gaps form a plurality of interruptions in a periphery of the ground plane 130.<sup>2</sup> The Office Action also objected to the use of "substantially" in the description of a portion of at least some of gaps 140A-140D in substantial overlapping alignment with internal antenna 32.<sup>3</sup> Applicant respectfully requests withdrawal of the new matter objections under 35 U.S.C. § 132(a) because Applicant's originally filed disclosure supports the previously submitted amendment to paragraph [0141].

<sup>1</sup> See final Office Action of June 2, 2009 at p. 1, items 1-4, and Amendment filed February 17, 2009 at p. 2.

<sup>2</sup> Final Office Action of June 2, 2009 at p. 1, items 2 and 3.

<sup>3</sup> *Id.* at p. 1, item 4.

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In objecting to the language specifying that the gaps depicted in FIG. 24 may extend outward to more than two different edges of the ground plane, the Office Action stated that "the specification might have support for 2-3 [different edges] but not 4, 5 or more .... [and] [t]herefore there is no support for *more than two different edges*."<sup>4</sup> Applicant first notes that there is no requirement that the original disclosure explicitly disclose the gaps as extending to 4, 5, 6, 7, etc. edges of the ground plane in order to support language of more than two edges. The fundamental factual inquiry relevant to the written description requirement is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, an applicant was in possession of the invention as now claimed.<sup>5</sup> An applicant can show possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention.<sup>6</sup> However, the subject matter of the claim need not be described or illustrated literally, i.e., using the same terms or *in haec verba* in order for the disclosure to satisfy the description requirement.<sup>7</sup> In any event, Applicant's disclosure, as originally filed, provides support for the language objected to in the Office Action.

For example, FIG. 24 (reproduced below) illustrates gaps 140A-140D that extend outward from a central region to three edges of ground plane 130.

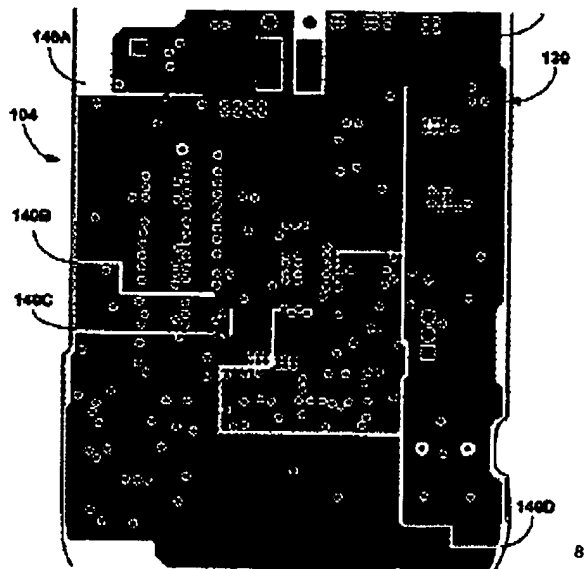
<sup>4</sup> *Id.* at p. 1, item 2 (emphasis added).

<sup>5</sup> Manual of Patent Examining Procedure § 2163.02 (citing *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991)).

<sup>6</sup> *Id.* (citing *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997)).

<sup>7</sup> *Id.*

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Three edges is more than two edges. Thus, Applicant's original disclosure describes a ground plane in which gaps extend outward to more than two different edges of the ground plane. Accordingly, no new matter was added by the amendment to paragraph [0141] of the specification.

In objecting to the language of paragraph [0141] that specifies the gaps form a plurality of interruptions in a periphery of the ground plane 130, the Office Action stated that the "images" of Applicant's original disclosure "might have support for 2-3 but not 4, 5 or more .... [and] [t]herefore there is not support for *plurality*."<sup>9</sup> Applicant again points out that there is no requirement that the original disclosure explicitly disclose the gaps as forming 4, 5, 6, 7, etc. interruptions in a periphery of the ground plane in order to support language of a plurality of interruptions.<sup>10</sup> As shown in the above reproduced FIG. 24 of Applicant's original disclosure, gaps 140A–140D form more than one interruption in the periphery of ground plane 130. More than one interruption is a plurality of interruptions. Therefore, Applicant's original disclosure conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, Applicant was in possession of a programmer comprising a circuit board that includes a substantially contiguous ground plane layer interrupted by a plurality of gaps that each extend

<sup>8</sup> Applicant's disclosure at FIG. 24.

<sup>9</sup> Final Office Action of June 2, 2009 at p. 1, item 3 (emphasis added).

<sup>10</sup> See *infra* at p. 2.

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outward from a central region of the ground plane layer to an edge of the ground plane layer to form a plurality of interruptions in a periphery of the ground plane layer.

In objecting to the language specifying that a portion of at least some of gaps 140A–140D is in substantial overlapping alignment with an internal antenna 32, the Office Action stated that Applicant's originally filed disclosure might support "*overlapping alignment*" but the specification as submitted fails to have support for *substantial overlapping*" alignment.<sup>11</sup> Applicant respectfully disagrees. One having ordinary skill in the art would recognize that Applicant had possession of a programmer comprising a circuit board that includes a substantially contiguous ground plane layer interrupted by a plurality of gaps, whereby a portion of at least some of the gaps are in substantial overlapping alignment with an internal antenna.

As noted in the Manual of Patent Examining Procedure, "substantially" is a broad term that is often used in conjunction with another term to describe a particular characteristic or feature of the claimed invention.<sup>12</sup> Additionally, the subject matter of the claim need not be described or illustrated literally, i.e., using the same terms or *in haec verba*, in order for the disclosure to satisfy the description requirement.<sup>13</sup> The description need only allow persons of ordinary skill in the art to recognize that Applicant invented what is claimed.<sup>14</sup> Overlapping alignment includes substantially overlapping alignment. Therefore, Applicant's originally filed specification adequately discloses an example in which a portion of at least some of gaps 140A–140D are in substantial overlapping alignment with internal antenna 32. For example, FIG. 24 illustrates gaps 140A–140D that are in substantial overlapping alignment with internal antenna 32.

For at least these reasons, no new matter was added by the amendment to paragraph [0141] of Applicant's disclosure presented in the Amendment filed on February 17, 2009.

#### **Claim Rejections Under 35 U.S.C. § 112**

In the final Office Action, claims 37–39 were rejected to under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claims 37–39 are fully-supported by Applicant's disclosure, such as at FIG. 24 and amended paragraph [0141]. As

<sup>11</sup> Final Office Action of June 2, 2009 at p. 1, items 4 (emphasis added).

<sup>12</sup> See MPEP § 2173.05(b).

<sup>13</sup> *Id.* at § 2163.03

<sup>14</sup> *Id.*

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discussed above with respect to the new matter objection to the specification, the amendment to paragraph [0141] presented in the Amendment filed on February 17, 2009 did not add new matter to the application. As a result, Applicant's disclosure conveys with reasonable clarity that Applicant was in possession of the claimed subject matter at the time the application was filed.<sup>15</sup> For at least these reasons, Applicant respectfully requests that the rejections under 35 U.S.C. § 112, first paragraph be withdrawn.

### **Claim Rejections Under 35 U.S.C. § 103**

In the Office Action, claims 1-4, 21, and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pesola et al. (U.S. Patent No. 5,271,056, hereinafter "Pesola") in view of Maoz et al. (U.S. Patent Application Publication No. 2004/0125029, hereinafter "Maoz"). In addition, claims 9 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pesola in view of Maoz as applied to claim 1, and further in view of Stein et al. (U.S. Patent Application Publication No. 2004/0230246, hereinafter "Stein"). Claims 5-8, 23-29, 32-34, and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pesola in view of Maoz as applied to claim 1, and further in view of Persson (U.S. Patent No. 6,207,912). Claims 30 and 31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pesola in view of Maoz in view of Persson as applied to claim 23, and further in view of Stein.

Applicant respectfully traverses the rejection of the claims. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

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<sup>15</sup> See *id.* (citing *Vas-Cath*, 935 F.2d at 1563-65, 19 USPQ.2d at 1117).

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### *Independent Claim 1*

As discussed in further detail in the Amendment of February 17, 2009, modifying Pesola in view of Maoz in the manner proposed in the Office Action would change the principle of operation of Pesola, and, thus, the combination would not have been obvious to one of ordinary skill in the art at the time of Applicant's invention.<sup>16</sup> Pesola is directed to a cellular phone that is constructed to reduce electromagnetic interference (EMI) between adjacent electronics within the phone. The EMI-shielding disclosed in Pesola is achieved by an electrically conductive frame plate with raised edges on both sides of the plate and the ground planes of two circuit boards.<sup>17</sup> Modifying the Pesola cellular phone to include the ground plane disclosed by Maoz would reduce the EMI-shielding of the Pesola frame and circuit board arrangement.

In the Response to Applicant's Arguments provided in the final Office Action, the Office Action asserted that Applicant was arguing that the intended use of Pesola would be changed by the modifications of Maoz.<sup>18</sup> The Office Action went on to assert without any authority that "[t]he intended use of a reference has no bearing on an apparatus claim."<sup>19</sup> Applicant respectfully disagrees with these assertions and traverses the rejection of claim 1 on a number of grounds.

Applicant has not asserted that modifying Pesola in view of Maoz would result in a use of the Pesola device that differs from that intended by Pesola. Rather, Applicant has asserted that modifying Pesola to include the ground plane disclosed by Maoz would change the principle of operation of Pesola. Changing the principle of operation of a device is not the same as changing the intended use of the device. One principle of operation of the Pesola phone is to reduce EMI between adjacent electronics within the phone.<sup>20</sup> For example, Pesola discloses reduction of EMI by employing a specific arrangement of components, i.e., an electrically conductive frame

<sup>16</sup> See Amendment filed February 17, 2009 at pp. 10 and 11.

<sup>17</sup> Pesola, Abstract, col. 2, ll. 13-15 and ll. 25-29.

<sup>18</sup> Final Office Action of June 2, 2009 at p. 10, item 24.

<sup>19</sup> *Id.*

<sup>20</sup> See, e.g., Pesola, Title ("ELECTROMAGNETIC INTERFERENCE SHIELDING CONSTRUCTION IN A RADIO TELEPHONE"), Abstract ("radio telephone comprises a frame on which printed circuit boards containing telephone electronics are secured on both sides of a substantially flat, electrically conductive frame plate. The frame plate together with ground foils of the printed circuit boards form EMI-shielding for the components located on the sides of the printed circuit boards which face the frame plate."), and col. 1, ll. 33-38 ("The object of the present invention is ... to provide a radio telephone construction ... in which EMI-shielding can be implemented without extra parts").

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plate with raised edges on both sides of the plate and the ground planes of two circuit boards.<sup>21</sup> The intended use, on the other hand, of the device disclosed by Pesola is the use of the device as a radio telephone.<sup>22</sup> Although modifying Pesola in view of Maoz reduces EMI shielding and thereby changes a principle of operation of the Pesola device, the modification nevertheless does not change the intended use as a radio telephone. Thus, in contrast to the assertion of the Office Action, Applicant did not argue that modifying Pesola with Maoz would have changed the intended use of Pesola.

Regardless of the intended use of the Pesola device, Pesola in view of Maoz is insufficient to render Applicant's claim 1 obvious. Even if Pesola in view of Maoz discloses each and every limitation of the claims, an assertion with which Applicant disagrees, the Office Action has failed to provide a rational reason why one having ordinary skill in the art would have modified Pesola in the manner proposed by the Office Action. The Office Action asserted that claim 1 is obvious over Pesola in view of Maoz because modifying Pesola in view of Maoz "would provide the predictable result of a programmer with an internal antenna and a ground plane layer that is disrupted by gaps for providing increased power without internal noise."<sup>23</sup> However, as noted in the Amendment filed on February 17, 2009, in establishing *prima facie* obviousness, a proposed modification or combination of prior art references cannot change the principle of operation of the prior art invention being modified.<sup>24</sup> Because the proposed modification to Pesola would change the principle of operation of the Pesola device, Pesola in view of Maoz is insufficient to render a Applicant's claims *prima facie* obvious under 35 U.S.C. § 103(a).<sup>25</sup>

A principle of operation of Pesola is to reduce EMI, or, as a corollary, increase EMI shielding between adjacent electronics in a cellular phone.<sup>26</sup> Pesola accomplishes this by employing a metallic electrically conductive frame and ground planes for each of two circuit boards.<sup>27</sup> In particular, Pesola increases EMI-shielding between cellular phone electronics by an electrically conductive frame plate with raised edges on both sides of the plate and the ground

<sup>21</sup> *Id.* at Abstract, col. 2, ll. 13-15 and ll. 25-29.

<sup>22</sup> *Id.* at col. 1, ll. 8 and 9 ("The present invention relates to the construction of a radio telephone").

<sup>23</sup> Final Office Action dated June 2, 2009 at p. 10, item 24.

<sup>24</sup> See, e.g., MPEP § 2114.

<sup>25</sup> *Id.* (citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)).

<sup>26</sup> See *infra* note 20.

<sup>27</sup> Pesola, Abstract, col. 2, ll. 13-15 and ll. 25-29.

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planes of two circuit boards.<sup>28</sup> The frame plate is electrically connected to the ground foils of the printed circuit boards.<sup>29</sup> Each circuit board is arranged on either side of the frame plate<sup>30</sup> such that the components of each circuit board face the frame plate<sup>31</sup> and are essentially contained in a metallic electrically conductive box that provides EMI-shielding for the circuit board components.<sup>32</sup>

Given this principle of operation of the Pesola device, one having ordinary skill in the art looking to modify Pesola would have avoided any modifications that would reduce the EMI shielding of the Pesola frame plate and circuit board arrangement. Adding the ground plane gaps disclosed by Maoz to the Pesola device would decrease EMI shielding because the gaps would provide pathways for EMI to be transmitted to and from the very circuit board components that Pesola is attempting to shield. That is, introducing gaps into the electrically conductive box that Pesola discloses is formed by the frame plate and circuit board arrangement would introduce pathways for EMI to be transmitted to and from the circuit board components enclosed within the box. Therefore, modifying Pesola to include the Maoz ground plane would change a principle of operation of Pesola. As a result, Applicant's claim 1 would not have been obvious to one having ordinary skill in the art at the time the application was filed.

For at least these reasons and the reasons discussed in the Amendment filed on February 17, 2009, the Office Action failed to establish the *prima facie* unpatentability of Applicant's independent claim 1 under 35 U.S.C. § 103(a) based on Pesola in view of Maoz and.

### ***Independent Claim 23***

Independent claim 23 recites a programmer for an implantable medical device that includes a programmer housing, and internal antenna, a first circuit board, a second circuit board, and a display device. The internal antenna is mounted on the first circuit board within the programmer housing. The internal antenna has a loop-like structure and defines a first aperture. The first circuit board includes at least one signal plane with an electrostatic discharge layer (ESD) defining a second aperture that is in substantially overlapping alignment with the first aperture. The display device is mounted on the second circuit board within the programmer

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at col. 2, ll. 27-29 and ll. 49-52.

<sup>30</sup> *Id.* at col. 1, ll. 40-47.

<sup>31</sup> *Id.* at col. 1, ll. 53-55.

<sup>32</sup> *See, e.g., id.* at col. 2, ll. 52-58.

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housing. The first circuit board also includes a substantially contiguous ground plane layer interrupted by a plurality of gaps.

The Office Action rejected Applicant's claim 23 based on Pesola in view of Maoz as applied to claim 1, and further in view of Persson. As with claim 1, independent claim 23 requires that the first circuit board includes a substantially contiguous ground plane layer interrupted by a plurality of gaps. The foregoing remarks with reference to claim 1 regarding changing the principle of operation of Pesola apply *mutandis mutatis* to claim 23. Independent claim 23 is therefore patentable over Pesola in view of Maoz and further in view of Persson for at least the reasons set forth above with reference to Applicant's claim 1.

As discussed in further detail in the Amendment of February 17, 2009, modifying Pesola in view of Maoz and Persson in the manner proposed in the Office Action fails to teach or suggest a programmer including a first circuit board that includes at least one signal plane with an ESD layer defining an aperture that is in substantially overlapping alignment with an aperture defined by a loop-like antenna, as required by claim 23.<sup>33</sup>

In response to Applicant's previously submitted arguments, the Office Action asserted that the domefoil 50 disclosed in Persson is between a keypad and circuit board and is therefore in substantial overlapping alignment with the circuit board.<sup>34</sup> The Office Action further asserted that Persson discloses printed circuit boards for portable communication devices that utilize ESD layers that define a peripheral layer and a central aperture.<sup>35</sup> Finally, the Office Action stated that the Applicant's claim 23 does not require that the ESD be on the circuit board, but, rather, that "it just has to be in a substantially overlapping alignment."<sup>36</sup> Applicant respectfully disagrees with these assertions and traverses the rejection of claim 23 on a number of grounds.

As explained in the Amendment of February 17, 2009, Persson does not disclose ESD layers that define a central aperture, as required by Applicant's claim 23. Persson discloses a domefoil 50 formed as a non-conductive sheet to, *inter alia*, protect the circuit boards from electrostatic discharge.<sup>37</sup> Regarding the configuration of the domefoil 50, Persson states:

[T]he inventive domefoil 50 has no open-air openings which would permit an electric spark to be transferred from a key 32 to the circuit board 20. All previous openings, such

<sup>33</sup> See Amendment filed February 17, 2009 at pp. 12-14.

<sup>34</sup> Final Office Action of June 2, 2009 at p. 11, item 25.

<sup>35</sup> *Id.* (citing Persson at FIG. 3 and cols. 3-4).

<sup>36</sup> *Id.*

<sup>37</sup> Persson, Abstract.

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as the openings for the illuminating means 24, are covered with additional domes 54 of a non-conductive material isolating the circuit board 20 from the keypad 30.”<sup>38</sup>

Persson further discloses that “the domefoil 50 ... is formed as a sheet fully covering the entire surface between the keypad 30 and the underlying circuit board 20.”<sup>39</sup> Therefore, Persson describes an ESD domefoil that is formed as a sheet with no apertures, and that fully covers the entire surface between a keypad and an underlying circuit board. In contrast, Applicant’s claim 23 requires an ESD layer that defines an aperture.

The Office Action asserted that the domefoil 50 disclosed by Persson defines an aperture that is in substantial overlapping alignment with an aperture defined by an antenna because “the domefoil 50 is between the keypad and the circuit board . . . Thus, the domefoil is in substantially overlapping alignment with the circuit board.”<sup>40</sup> This assertion reflects a misunderstanding Applicant’s claim language. Claim 23 requires a first circuit board that includes at least one signal plane with an ESD layer defining an aperture in substantially overlapping alignment with an aperture defined by a loop-like antenna. Even if the domefoil disclosed by Persson is in substantial overlapping alignment with the circuit board, an assertion with which Applicant does not necessarily agree, the domefoil 50 fails to define an aperture. As a result, the domefoil 50 disclosed by Persson cannot reasonably be characterized as an ESD layer in accordance with Applicant’s independent claim 23.

As another example of an apparent misunderstanding of Applicant’s claim language, the Office Action asserted, in response to Applicant’s remarks provided in the Amendment filed on February 17, 2009, that the domefoil 50 disclosed in Persson is in substantial overlapping alignment with a circuit board and that Applicant’s claim 23 does not require that the ESD be on the circuit board, but, rather, that it just has to be in a substantially overlapping alignment. However, claim 23 does not require the ESD layer to be in substantial overlapping alignment with a circuit board. Rather, claim 23 requires that the ESD layer define an aperture that is in substantially overlapping alignment with an aperture defined by a loop-like antenna. The cited references fail to disclose or suggest such a programmer.

Additional statements in the final Office Action reflect further misunderstandings of Applicant’s claim language. For example, in support of the rejection of claim 23, the Office

<sup>38</sup> *Id.* at col. 3, lines 27–34 (emphasis added).

<sup>39</sup> *Id.* at col. 3, ll. 21–23.

<sup>40</sup> Final Office Action of June 2, 2009 at p. 11, item 25.

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Action stated Applicant's claim 23 is obvious over Pesola in view of Maoz and Persson because "[s]ince the [ESD] layers [disclosed by Persson] are throughout the entire circuit board then it would be obvious that the electrostatic discharge layer would be the approximate size and shape of the antenna."<sup>41</sup> However, Applicant's claim 23 does not require that the ESD layer be "the approximate size and shape" of an antenna. Rather, claim 23 requires that the ESD layer define an aperture that is in substantially overlapping alignment with an aperture defined by a loop-like antenna. To the extent Persson even discusses an antenna, Persson merely states that its telephone includes an antenna 13.<sup>42</sup> Persson does not state how the antenna is arranged relative to an ESD layer, much less an ESD layer of a circuit board on which the antenna is mounted. Thus, Persson fails to disclose or suggest an ESD layer defining a second aperture in substantially overlapping alignment with the first aperture, as required by Applicant's independent claim 23.

For at least these reasons and the reasons discussed in the Amendment filed on February 17, 2009, the Office Action failed to establish the *prima facie* unpatentability of Applicant's independent claim 23 under 35 U.S.C. § 103(a) based on Pesola in view of Maoz and further in view of Persson.

#### ***Dependent Claims***

Claims 2-10, 21, 33, and 35 depend from independent claim 1 and claims 24-32, 34, and 36 depend from independent claim 23. For at least the reasons discussed above, claims 1 and 23 are patentable over the cited references. Accordingly, the dependent claims are also patentable over the cited references. Moreover, the dependent claims recite limitations that are neither disclosed nor suggested by the cited references.

Claims 5 and 6, which depend from claim 1, specify that the first circuit board includes an ESD layer defining a peripheral conductive layer and a central aperture, the internal antenna defines an aperture, and the central aperture of the ESD layer substantially approximates a size and shape of the aperture of the antenna. Claim 7, which also depends from claim 1, specifies that the ESD layer is a first ESD layer formed on a first side of the ground plane layer, the programmer further comprises a second ESD formed on a second side of the ground plane layer.

<sup>41</sup> *Id.* at p. 7, item 18.

<sup>42</sup> See Persson, col. 3, line 4 (this is the only mention of an antenna in the entire reference).

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Claim 8, which also depends from claim 1, specifies that the second ESD defines a second central aperture that substantially approximates a size and shape of the central aperture of the first ESD.

The Office Action indicated claims 5-8 were obvious in view of Pesola and Maoz, in further view of Persson. Applicant respectfully disagrees. As discussed above with respect to claim 23, neither Pesola nor Maoz or Persson discloses or suggests an ESD layer defining an aperture. Moreover, the cited references fail to disclose or suggest an ESD layer defining an aperture that approximates a size and shape of an antenna aperture, as recited by Applicant's claim 6. Persson (or any other cited reference for that matter) fails to disclose any connection between an antenna and the domefoil 50 (which the Office Action characterized as an ESD layer). Instead, the reference merely states that the disclosed telephone includes an antenna 13.<sup>43</sup> Persson does not describe the shape and size of the domefoil 50 as related in any way to an antenna. Furthermore, because Persson explicitly discloses that the domefoil 50 does not contain any apertures, Persson fails to disclose or suggest that the domefoil defines an aperture that approximates a size and shape of an antenna aperture, as required by Applicant's claims.

In the Response to Arguments section, the final Office Action asserted that because the domefoil disclosed by Persson is "throughout the entire circuit board then it would be obvious that the electrostatic discharge layer would be the approximate size and shape of the antenna."<sup>44</sup> Claims 5-8, however, do not require an ESD layer that is the approximate size and shape of an antenna. Instead, claim 6 requires an ESD layer that defines a central aperture that "substantially approximates a size and shape of the aperture of the antenna." Thus, claim 6 requires the aperture defined by the ESD layer and not the ESD layer itself to approximate a size and shape of an aperture of an antenna. Neither Pesola nor Maoz or Persson discloses or suggests an ESD layer defining an aperture. Moreover, the cited references fail to disclose or suggest an ESD layer defining an aperture that approximates a size and shape of an antenna aperture, as recited by Applicant's claim 6.

Stein fails to cure the deficiencies in any of Pesola, Maoz, or Persson, or any combination thereof with respect to the patentability of Applicant's claims. Therefore, for at least the foregoing reasons and the reasons discussed in the Amendment filed on February 17, 2009, the

<sup>43</sup> See Persson, col. 3, line 4.

<sup>44</sup> Final Office Action of June 2, 2009 at p. 12, item 27.

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Examiner has failed to establish a *prima facie* case for non-patentability of any of Applicant's claims 1-10, 21, and 23-39 under 35 U.S.C. 103(a) based on Pesola, alone or in any combination with Maoz, Persson, and/or Stein. Reconsideration and withdrawal of the rejection of the claims are respectfully requested.

**CONCLUSION**

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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